

format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited treatment. The denial letter shall be signed by the FOIA Officer or the FOIA Officer's designee, and shall include:

- (1) The name and title or position of the person responsible for the denial;
- (2) A brief statement of the reason(s) for the denial, including any FOIA exemption applied by TVA in denying the request;
- (3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and
- (4) A statement that the denial may be appealed under §1301.9 and a description of the requirements of §1301.9.

§ 1301.7 Exempt records.

(a) *Records available.* TVA's records will be made available for inspection and copying upon request as provided in this section, except that records are exempt and are not made available if they are:

- (1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and
- (ii) Are in fact properly classified pursuant to such Executive order;
- (2) Related solely to the internal personnel rules and practices of TVA;
- (3) Specifically exempted from disclosure by statute;
- (4) Trade secrets and commercial or financial information obtained from any person and privileged or confidential;
- (5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with TVA, including without limitation records relating to control and accounting for special nuclear material and to the physical se-

curity plans for the protection of TVA's nuclear facilities;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

- (i) Could reasonably be expected to interfere with enforcement proceedings,
- (ii) Would deprive a person of a right to a fair trial or an impartial adjudication,
- (iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,
- (iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,
- (v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institution; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) The availability of certain classes of nonexempt records is deferred for such time as TVA may determine is reasonably necessary to avoid interference with the accomplishment of its statutory responsibilities. Such records

§ 1301.8

18 CFR Ch. XIII (4-1-12 Edition)

include bids and information concerning the identity and number of bids received prior to bid opening; all nonexempt records relating to bids between the time of bid opening and award; and all nonexempt records relating to negotiations in progress involving contracts or agreements for the acquisition or disposal of real or personal property by TVA prior to the conclusion of such negotiations. Any reasonably segregable portion of an available record shall be provided to any person requesting such record after deletion of the portions which are exempt under this paragraph.

§ 1301.8 Business information.

(a) *In general.* Business information obtained by TVA from a submitter will be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means commercial or financial information obtained by TVA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from whom TVA obtains business information, directly or indirectly. The term includes corporations; state and local governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* TVA shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section.

The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification of submitters.

(e) *Where notice is required.* Notice shall be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) TVA has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* TVA will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by TVA until after its disclosure decision has been made shall not be considered by TVA. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* TVA shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever TVA decides to disclose business information over the objection of a submitter, TVA shall give the submitter written notice, which shall include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed, and